

IN THE HIGH COURT OF JUDICATURE AT PATNA

Saroj Devi

vs.

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 5827 of 2015

21 September 2023

(Hon’ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

- Whether a writ petition under Article 226 of the Constitution of India is maintainable for claiming compensation due to the death of a person caused by an accident arising from an act of negligence by a government instrumentality?
- Whether the National Building Construction Corporation (NBCC) is liable to compensate the petitioner for the death of her son under the principle of “strict liability” despite the NBCC’s assertion that precautions were taken?

Headnotes

There are established acts and omissions of the respondent authorities on the face of the record and there is consequent deprivation of a fundamental right of the petitioner, and thus the writ court can award monetary compensation. It would cover a case where the State or its instrumentality has failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Thus, Article 21 of the Constitution is attracted and Article 226 of the Constitution can be invoked to claim monetary compensation, since such a remedy is available in public law, based on strict liability for breach of fundamental rights. (Para 18)

Since there has been an established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution of India, Court is competent to award monetary compensation, as the State and its instrumentalities i.e. NBCC has failed to discharge its duties, de hors the fact that the principle of “strict liability” also casts liability on a person undertaking an activity involving hazardous or risky exposure to human life, even if it is assumed that all safety measures had been adopted. Hence, irrespective of there being any negligence or carelessness on the part of the managers / contractors of the Respondent-NBCC, the NBCC is liable under the law of torts to compensate for the injury caused to the petitioner on account of death of his son. (Para 20)

Case Law Cited

Rama Nand Rai v. State of Bihar, **2021 (1) PLJR 361**; U.P. State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey, **(1999) 1 SCC 741**; Air India Statutory Corporation v. United Labour Union, **(1997) 9 SCC 377**; Nilabati Behera v. State of Orissa, **(1993) 2 SCC 746**; Rylands v. Fletcher, **(1868) LR 3 HL 330**; M.C. Mehta v. Union of India, **(1987) 1 SCC 395**; Rudul Sah v. State of Bihar, **(1983) 4 SCC 141**; D.K. Basu v. State of West Bengal, **(1997) 1 SCC 416**; Chairman, Railway Board v. Chandrima Das, **(2000) 2 SCC 465**; Sube Singh v. State of Haryana, **(2006) 3 SCC 178**; Sube Singh v State Of Haryana, **AIR 2006 SC 1117**; Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association, **(2011) 14 SCC 481**; Raghuvansh Dewanchand Bhasin v. State of Maharashtra, **(2012) 9 SCC 791**; In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News dated 23.01.2014, **(2014) 4 SCC 786**; Raman v. Uttar Haryana Bijli Vitran Nigam Ltd., **(2014) 15 SCC 1**; Anil Kumar Gupta v. Union of India, **(2016) 14 SCC 58**; Anita Thakur v. State of J&K, **(2016) 15 SCC 525**; Ms. Z v. State of Bihar, **(2018) 11 SCC 572**; Nizam’s Institute of Medical Sciences v. Prasanth S. Dhanaka, **(2009) 6 SCC 1**; General Manager, Kerala SRTC v. Susamma Thomas, **(1994) 2 SCC 176**; Oriental Insurance Co. Ltd. v. Ram Prasad Varma, **(2009) 2 SCC 712**; Association of Victims of Uphaar Tragedy v. Union of India, **(2011) 14 SCC 481**; M.P. Electricity Board v. Shail Kumari, **(2002) 2 SCC 162**; National Insurance Co. Ltd. v. Pranay Sethi, **(2017) 16 SCC 680**; Sarla Verma v. Delhi Transport Corporation, **(2009) 6 SCC 121**; Madhu Kaur v. Govt. of NCT of Delhi, **W.P. (C) No. 1077 of 2007** (Delhi HC)

List of Acts

The Constitution of India (Article 21, Article 226); Indian Penal Code (Section 304 Part-II); Disaster Management Act, 2005; Motor Vehicles Act, 1988; General Clauses Act, 1897

List of Keywords

Public Law Compensation; Article 21; Article 226; Strict Liability; Hazardous Activity; NBCC; Fundamental Rights; Open Drain Accident; Death Compensation; Rylands v. Fletcher; Sovereign Immunity; Civil Writ Jurisdiction

Case Arising From

Death of Ranjit Kumar, son of the petitioner Saroj Devi, due to falling into an open, under-construction drain excavated by NBCC in Kankarbagh, Patna, on 19.01.2010.

Appearances for Parties

For the Petitioner: Mr. Vishwajeet Singh, Advocate
For the State: Mr. Pankaj Kumar (SC-12), Mr. Anuj Kumar (AC to SC-12)
For Respondent No. 5 (NBCC): Mr. Satish Kumar Sinha, Advocate

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5827 of 2015

Saroj Devi, w/o late Ram Bhushan Singh, r/o Mohalla Indira Nagar, P.S.-
Kankarbagh, in the District of Patna.

... .. Petitioner/s

Versus

- 1. The State of Bihar, through Chief Secretary, Bihar, Patna.
- 2. The Principal Secretary, Urban Development and Housing Department,
Government of Bihar, Vikas Bhawan, Patna, Bihar.
- 3. The Commissioner, Patna Division, Bihar
- 4. The District Magistrate, Patna, Bihar.
- 5. The National Building Construction Corporation, through its Managing
Director, Hig-Housing Colony Bahadurpur, Patna.

... .. Respondent/s

Appearance:		
For the Petitioner/s	:	Mr. Vishwajeet Singh, Adv.
For the State	:	Mr. Pankaj Kumar, SC-12 Mr. Anuj Kumar, AC to SC-12
For the Respondent No. 5	:	Mr. Satish Kumar Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 21-09-2023

The present writ petition has been filed for directing the respondent authorities to make payment of suitable compensation on account of death of the son of the petitioner, namely, Ranjit Kumar, who died in an accident, which took place due to him falling in an open drain, situated at Kankarbagh, which was being constructed by the National Building Construction Corporation (hereinafter referred to as “the NBCC”).



2. The brief facts of the case, according to the petitioner, are that on 19.1.2010, the son of the petitioner along with his friend was returning back to his home on a bike and on the way, they fell down in an open drain, which was being constructed by the NBCC and had been excavated 20 feet deep, leading to death of the son of the petitioner. Thereafter, an FIR bearing Patrakar Nagar P.S. Case No. 13/2010 dt. 20.1.2010 was lodged. It is submitted that the construction work was being carried out negligently by the NBCC without barricading the area in question. It is also submitted that the police had investigated the matter and filed a charge-sheet dt. 31.7.2010, wherein it was stated that upon investigation of the case, inspection of the place of occurrence and on the basis of the available evidence, the case has been found to be true qua the contractor, namely, Gabudhan Singh @ Gabudhan Kumar @ Jee Kumar, under Section 304 Part-II of the Indian Penal Code. The said contractor is stated to have been appointed by the NBCC and the work in question had been sub-letted to him.

3. The learned counsel for the petitioner has referred to a judgment, rendered by this Court in the case of ***Rama Nand Rai vs. The State of Bihar & Ors.***, reported in **2021 (1) PLJR 361**, to contend that a claim in public law for compensation for



contravention of human rights, fundamental freedoms and for injuries caused on account of laxity & apathy of Govt. authorities and its instrumentalities is an acknowledged remedy, hence, the present writ petition has been filed for grant of compensation. It is also submitted that monetary or pecuniary compensation can very well be awarded by a writ Court & the same is an appropriate and an effective / suitable remedy for redressal of established infringement of fundamental right to life of a citizen and such claim of the petitioner is based on the principle of strict liability, to which the defence of sovereign immunity is not available.

4. Per contra, the learned counsel for the NBCC has submitted that the work in question was sub-letted to the aforesaid contractor and before start of the work in question, ample precautions were taken, the area in question had been barricaded and notices had also been issued in the newspapers, wherein it was stated that since the work of construction of main drain is going on at Kankarbagh, starting from tempo stand to Jogipur pump house & the area in question has been barricaded, it is requested that diversion or main road be used for crossing the road in question. It is thus contended that since there is no negligence on the part of the NBCC, it is not liable to pay any compensation to the petitioner, in lieu of the death of his son.



5. The learned counsel for the NBCC has further submitted that the aforesaid contractor has died during the interregnum period, hence, the criminal proceedings have abated. Lastly, it is submitted that the petitioner should have availed the remedy, provided for under the Disaster Management Act, 2005, by approaching the State Government for compensation.

6. As far as the State Government is concerned, it has washed its hands off the present case and has submitted that it is for the NBCC to take a call in the present case.

7. I have heard the learned counsel for the parties and find that the primary issue, required to be addressed, is as to whether under Article 226 of the Constitution of India, the present writ petition for grant of compensation in lieu of the death of the son of the petitioner, on account of falling in the drain being constructed by the Respondent-NBCC, is maintainable or not. Yet another issue required to be considered is as to whether in case the NBCC had taken full care and precaution to ensure that no mishap happens but still mishap has taken place, whether it would still be liable to pay compensation.

8. Now advertent to the first issue, as to whether this Court is competent to grant compensation in such cases or not, this court would at the outset refer to a judgment rendered by the



Hon'ble Apex Court in the case of ***U.P. State Cooperative Land Development Bank Ltd. Vs Chandra Bhan Dubey & Ors.***, reported in (1999) 1 SCC 741, para no. 27 whereof is being reproduced herein below:-

“In view of the fact that control of the State Government on the appellant is all-pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of the English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate



cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to



remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial “bull in a china shop” in the exercise of its jurisdiction under Article 226”

9. Another judgment which I would like to refer, is the one rendered by the Hon'ble Apex Court in the case of **Air India Statutory Corporation & Ors. vs. United Labour Union & Ors.**, reported in (1997) 9 SCC 377, paragraph no. 59 whereof is reproduced herein below:-

“The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts.....”

10. A claim in public law for compensation for contravention of human rights, fundamental freedoms & for injuries caused on account of laxity & apathy of Govt. authorities is an acknowledged remedy. This aspect of the matter has been aptly dealt with in para no. 17 of the Judgement rendered by the Hon'ble Apex Court in the case of **Nilabati Behera (Smt) Alias Lalita Behera vs. State of Orissa & Others**, reported in (1993) 2 SCC 746.

11. It would now be apt to refer to the principle of no-fault



liability. This principle was enunciated in the celebrated case of *Rylands vs. Fletcher*, reported in (1868) LR 3 HL 330. In this case the defendants (John Rylands and Jehu Horrocks), owners of a mill, retained independent contractors to build a reservoir on their land to supply water to their mill. In course of the work the contractors came across some old shafts and passages in the land of the defendants which communicated with mines of the plaintiff but the contractors could not, on account of their negligence, discover the fact that the shafts communicated with the plaintiff's mines, for the shafts appeared to be filled with earth, hence they did not block the shafts up. Consequently, when the reservoir was filled, the water escaped down the shafts and flooded the mines of the plaintiff, causing damage.

Originally the suit, titled as "Fletcher v. Rylands", was tried at the Liverpool Summer Assizes 1862 and the verdict was in favor of the defendants. The plaintiff took a writ of error to the Court of Exchequer Chamber, which gave him judgment, even though the defendants were neither themselves negligent nor vicariously liable in the tort of negligence for the negligence of their independent contractors who were not their employees. The basis of liability in the case was propounded by Blackburn J, as follows:-



“We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by shewing that the escape was owing to the plaintiff's default; or perhaps that the escape was the consequence of vis major, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.”

On being defeated in the Court of Exchequer Chamber, the defendants preferred an appeal to the House of Lords, where the case was titled as "**Rylands vs. Fletcher**", which upheld the judgment of Blackburn J. with, however, an important qualification made by Lord Cairns, namely that the liability would arise where the defendant made a 'non-natural use' of the land. Thus finally a rule of "No fault liability" was established which is stated as follows:-

“A person who, in the course of non-natural user of land, is held to be responsible for the accumulation on it of anything likely to do harm if it escapes is liable for the interference with the use of the land of another which results from the escape of the thing from his land.”

12. The aforesaid rule in *Rylands vs. Fletcher* (supra) was subsequently interpreted to cover a variety of things 'likely to



do mischief on escape”, irrespective of whether they were dangerous per-se e.g. water, electricity, explosions, oil, noxious fumes, colliery spoil, poisonous vegetation, etc. The Hon'ble Apex Court in the case of ***M. C. Mehta & Anr. vs. Union of India & Ors.***, reported in (1987) 1 SCC 395 held that since the rule was evolved in the case of *Rylands vs. Fletcher* (surpa), in the 19th Century, at a time when all these developments of science and technology had not taken place, the same cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. The Hon'ble Apex Court, thus, held as follows:-

"31.We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on



account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its over-heads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently



dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher (supra)."

13. It is now a well accepted proposition of law that monetary or pecuniary compensation can be awarded by a writ court and is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State. This aspect of the matter has been dealt with by the Hon'ble Apex Court from time to time in a catena of decisions, some of which are being referred to herein below:-

I. (1983) 4 SCC 141 [Rudul Sah vs State of Bihar & Anr.]

II. (1997) 1 SCC 416 [D.K. Basu Vs. The State of West Bengal]

III. (2000) 2 SCC 465 [Chairman, Railway Board & Ors. vs. Chandrima Das (Mrs.) & Ors.]



IV. (2006) 3 SCC 178 [Sube Singh vs State of Haryana & Ors.]

V. (2011) 14 SCC 481 [Municipal Corporation of Delhi, Delhi vs Uphaar Tragedy Victims Association & Ors.]

VI. (2012) 9 SCC 791 [Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra & Anr.]

VII. (2014) 4 SCC 786 [In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News dated 23.01.2014]

VIII. (2014) 15 SCC 1 [Raman vs Uttar Haryana Bijli Vitran Nigam Ltd. & Ors.]

IX. (2016) 14 SCC 58 [Anil Kumar Gupta vs Union of India And Ors.]

X. (2016) 15 SCC 525 [Anita Thakur & Ors. Vs. Govt. of J & K & Ors.]

XI. (2018) 11 SCC 572 [Ms. Z Vs. The State of Bihar & Ors.]

14. It would be apropos to refer to yet another judgment, rendered in a similar kind of matter, by the Hon'ble Delhi High Court in the case of ***Madhu Kaur vs. Govt. of NCT of Delhi & Anr.*** (Writ Petition (c) No. 1077 of 2007), decided on 7.7.2009.

15. The position which emerges from the aforementioned decisions is that award of compensation in a proceeding under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. It is equally a well accepted



proposition of law that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available & the citizen must receive the amount of compensation from the State and / or its instrumentalities, which shall have the right to be indemnified by the wrong doer. Therefore, when the court moulds the relief by granting “compensation” in proceedings under Article 32 or 226 of the Constitution of India, seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State, which has failed in its public duty to protect the fundamental rights of the citizen.

16. It thus follows that ‘a claim in public law for compensation’ for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights and such a claim based on strict liability made by



resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in 'private law for damages in tort', resulting from the contravention of the fundamental rights.

17. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence to the offender (irrespective of compensation), must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. It is also an equally settled law that an award of compensation in the public law jurisdiction is without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, in addition to the traditional remedies and not in



derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

18. Thus the incontrovertible corollary, at least in cases where the relevant facts are not in dispute, there is established acts and omissions of the respondent authorities on the face of the record and there is consequent deprivation of a fundamental right of the petitioner, is that the writ court can award monetary compensation. It would, undoubtedly, cover a case where the State or its instrumentality has failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Thus, Article 21 of the Constitution is attracted and Article 226 of the Constitution can be invoked to claim monetary compensation, since such a remedy is available in public law, based on strict liability for breach of fundamental rights.

19. At this juncture, it would also be pertinent to refer to some of the judgments on the issue of “strict liability” i.e. the one rendered by the Hon’ble Apex Court in the case of ***M. P. Electricity Board vs. Shail Kumari & Ors.***, reported in (2002) 2 SCC 162 and the one rendered in the case of ***Raman vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors.***, reported in (2014) 15



SCC 1.

20. In the present case, it is not in dispute that the son of the petitioner has died on account of falling in the drain being constructed by the Respondent-NBCC and the said fact has also been corroborated by the Police in the investigation made by it, which has also filed a charge-sheet dated 31.7.2010 in connection with Patrakar Nagar P.S. Case No. 13 of 2010, holding the contractor prima facie guilty of the offences alleged, however, the Respondent-NBCC has vehemently denied that there was any negligence on their part, inasmuch as proper barricading had been done at the place of occurrence and caution notices had been published in the newspapers, as has been mentioned herein above, in the preceding paragraphs.

Considering the materials available on record, in its entirety, this Court finds that it is not in dispute that the death of the son of the petitioner has taken place on account of him having fallen in the drain being constructed by the NBCC. In such view of the matter, since there has been an established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution of India, this Court is competent to award monetary compensation, especially in view of the fact that the State and its instrumentalities i.e. NBCC has failed to discharge



its duties, de hors the fact that the principle of “strict liability” also casts liability on a person undertaking an activity involving hazardous or risky exposure to human life, even if it is assumed that all safety measures had been adopted. Hence, irrespective of there being any negligence or carelessness on the part of the managers / contractors of the Respondent-NBCC, the NBCC is liable under the law of torts to compensate for the injury caused to the petitioner on account of death of his son. This aspect of the matter stands fully covered by various pronouncements of the Hon’ble Apex Court, as referred to hereinabove in the preceding paragraphs, thus, I hold that the present writ petition for grant of compensation is maintainable as against the Respondents and the petitioner is entitled to grant of compensation.

21. Now, I proceed to consider the other issue i.e. regarding the quantum of damages to be granted to the petitioner herein, in the present case, for the death of his son.

22. This Court finds that the Hon’ble Apex Court in the case of *Nizam’s Institute of Medical Sciences vs. Prasanth S. Dhanaka & Ors.*, reported in (2009) 6 SCC 1, has rejected the use of multiplier system to calculate and award the quantum of compensation. In this connection, it would be apt to refer to



paragraph no. 92 of the said judgment herein below:-

"92. Mr Tandale, the learned counsel for the respondent has, further submitted that the proper method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant has suffered, the expenditure that he has incurred and *is* likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method."

23. In **General Manager, Kerala State Road Transport Corp., Trivandrum v Mrs Susamma Thomas & Ors.**, reported in **(1994) 2 SCC 176**, the Supreme Court held as under:-

"The determination of the quantum must answer what *contemporary* society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales." All this means that the sum awarded must be fair and reasonable by accepted legal standards."

24. The Hon'ble Supreme Court in **Sube Singh v State Of Haryana**, reported in **AIR 2006 SC 1117** has held thus:-

"It is thus now well settled that award of compensation against the State is an appropriate and effective remedy



for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and *circumstances* of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of Code of Civil Procedure"

25. In ***Oriental Insurance Co. Ltd v Ram Prasad Varma & Ors.***, reported in **2009 (2) SCC 712**, the Supreme held that "just" must be given its logical meaning. Though, the compensation awarded cannot be a bonanza or a source of profit but, in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.

26. The Hon'ble Supreme court in ***Association of Victims of Uphaar Tragedy & Ors.***, reported in **(2011) 14 SCC 481**, held:-

"Therefore, what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, but something more."

27. The occurrence/accident in question, admittedly, is not covered by the provisions of the Motor Vehicles Act, 1988 (herein after referred to as the "MV Act"). In my view, the Motor Vehicle Act cannot, therefore, be invoked for the



purposes of calculation of damages to which the petitioner may be entitled to. Consequently, this Court finds that considering the law laid down by the Hon'ble Apex Court, with regard to award of compensation in cases of victims of violence etc. including rape resulting in permanent disability, physical incapacitation, mental injury and death, like in the present case, as referred to herein above in the cases of **D.K. Basu** (Supra), reported in **(1997) 1 SCC 416**, **Chandrima Das (Mrs.) & Ors.** (Supra), reported in **(2000) 2 SCC 465**, **Uphaar Tragedy Victims Association & Ors.** (Supra), reported in **(2011) 14 SCC 481**, **In Re: Indian Woman says gang-raped on orders of Village Court** (Supra), reported in **(2014) 4 SCC 786**, **Raman** (Supra), reported in **(2014) 15 SCC 1**, **Anil Kumar Gupta** (Supra), reported in **(2016) 14 SCC 58**, **Anita Thakur & Ors.** (Supra), reported in **(2016) 15 SCC 525** and **Ms. Z** (Supra), reported in **(2018) 11 SCC 572**, a sum of Rs. 10,00,000/- would be just, reasonable and an adequate compensation, in the facts and circumstances of the present case. Accordingly I hold and direct that the petitioner is liable to get a sum of Rs 10,00,000 (Rupees Ten lakhs only) as compensation from the Respondent-NBCC.

28. Alternatively, if the multiplier method, provided for in the



Motor Vehicles Act, 1988, is applied to the facts and circumstances of the case, the amount of just compensation / total loss of dependency, to which the petitioner would be entitled to, in view of the law laid down by the Hon’ble Apex Court in the Case of *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, reported in (2009) 6 SCC 121 and in the case of *National Insurance Company Ltd. vs. Pranay Sethi & Ors.*, reported in (2017) 16 SCC 680, would work out to a sum of Rs. 15-18 lacs approximately.

29. In view of the forgoing discussion, this Court deems it fit and proper to direct the Respondent No. 5 to pay to the petitioner a sum of Rs. 10,00,000/- in lump sum, by way of compensation in lieu of death of his son, within a period of four weeks from today.

30. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.10.2023
Transmission Date	NA

